

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 186 of 1998

to

CIVIL REVISION APPLICATION No 188 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAJENDRAKUMAR AJITKUMAR PATEL

Versus

ASSUMIYA KALUMIYA MALEK

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Appearance:

MR JAYANT PATEL for Petitioner

MR RAJENDRA P ASTIK for Respondent No. 1

MR GC MAZMUDAR for Respondent No. 2, 3, 4, 5, 6

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 20/03/98

JUDGEMENT (COMMON)

Heard the learned Advocates for the parties.  
These three Civil Revision Applications are disposed of by this common order.

Civil Revision Applications No.186/98 and 187/98 arise out of Civil Suit No.781/95. The say of the plaintiff-respondents is that they are the owners of the

suit land and cultivating the same. They came across a notice appeared in a local newspaper namely; Sandesh daily of 20.7.1995, wherein the suit land has been claimed to be of the defendants. Thus, apprehending disturbance of the possession of the suit land, they filed suit for declaration and permanent injunction. The plaintiff also filed an application under Order 39 Rules 1 and 2 CPC, seeking temporary injunction restraining the defendants from disturbing their possession. The application was opposed by the defendant-petitioners. It was stated that they had purchased the land by sale deed dated 6.3.1983. It was also pointed out that the suit is filed after 12 years and is time-barred. They claimed that the possession of the land was received since the date of the sale. The trial court, by order dated 12.8.1997, confirmed the order of maintaining status-quo. The plaintiffs being aggrieved by the order of not granting the injunction restraining the defendant from interfering with the possession of the suit land, preferred an Appeal which was registered as Civil Misc.Appeal No.157/97. The defendant-petitioners aggrieved by the order granting order of status-quo also preferred an Appeal which was registered as Civil Misc.Appeal No.153/97. The learned Extra Astt.Judge, Ahmedabad (Rural) at Mirzapur dismissed the Misc.Appeal No.153/97 filed by the defendant-petitioner. However, the appeal filed by the plaintiff-respondents was allowed and granted temporary injunction restraining defendant from interfering in possession of the plaintiffs in the suit land.

2. It is contended by Mr J N Patel, learned Advocate appearing for the petitioner that the learned Judge has committed material illegality in exercise of jurisdiction in overlooking the fact that the sale deed dated 6.3.1983 was initially given a Registration No.12695 mainly because at the relevant point of time, due to stamp valuation etc., it was kept as pending document, and therefore, in the year 1989, by Registration No.24800 it has been given pucca number. It is also submitted that the learned Judge has committed error in giving much importance to the fact that the revenue entry has been cancelled by the Collector. Learned Advocate has emphasised on the fact that the injunction restraining the defendant petitioner not to interfere with the possession of the suit land will cause great hardship and create problems as they are in possession of the suit land for number of years i.e. since 1983.

3. There is no substance in any of the contentions aised by the learned Advocates. It is the own say of the

petitioner-defendant in the written statement that the suit land is in possession of the third party. The name of the third party has not been disclosed. Therefore, the petitioner is not in possession of the suit property on his own saying. The petitioner wanted mutation in revenue. However, on objection filed by the plaintiff, the same has been cancelled. The appeal filed by the petitioner against the said order has been rejected. Signature or thumb impression of the original owners on the sale deed of 1983 is not only denied but claimed to be forged. The learned Judge on careful consideration of the affidavit filed by the parties, the documents produced has found a strong prima facie case in favour of the plaintiff-respondents. The well reasoned judgment of the Appellate Court, does not call for interference of this court in exercise of powers under Section 115 CPC.

4. So far as Civil Revision Application No.188/98 is concerned, it arises out Civil Suit No.497/96. The said suit has been filed by the same plaintiff seeking decree to declare the alleged sale deed of 1983 registered in 1989, be illegal and void. The trial court having found prima facie case in favour of the plaintiff, granted injunction, restraining the petitioner-defendant from transferring and alienating the suit property. The petitioner's appeal against the said judgment has been rejected. The learned advocate has not been able to show any illegality, much less the error of jurisdiction in the said order. I find no reason to interfere with the said order in exercise of powers under section 115 CPC.

5. In view of the aforesaid, all the three Revision Applications are summarily rejected. Interim relief in each of the matter is vacated.

Mr J N Patel, learned Advocate prays that the interim relief granted by this Court may further be continued for a period of eight weeks. Considering the facts of the case, it is directed that the interim relief granted by this Court shall further continue for a period of four weeks.

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